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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 82

LEE ARTHUR HESTER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(On Writ Of Certiorari To The Supreme Court of Illinois)

BRIEF FOR RESPONDENT

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THE PEOPLE OF THE STATE OF ILLINOIS,

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(On Writ Of Certiorari To The Supreme Court of Illinois)

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether The Admission Into Evidence Of Statements Of The 14 Year Old Petitioner Violated The Fifth, Sixth, Or Fourteenth Amendments.

II. Whether The Guilt Of Petitioner Was Established Beyond A Reasonable Doubt.

III. Whether This Court Can Consider An Alleged *McNabb-Mallory* Violation Which Was Never Presented To The Courts Below.

IV. Whether The Rule Requiring An Expert Medical Witness To Base His Opinion On Hypothetical Questions Derived From Properly Admissible Evidence Violated The Petitioner's Right To A Fair Trial.

V. Whether The Work Sheets Used By A Chemist In The Compilation Of The Report That Was Submitted To The Defense Should Have Been Produced At Trial.

VI. Whether The Arrest Of Petitioner And The Subsequent Examination Of His Clothing Was Based Upon Probable Cause.

STATEMENT OF THE CASE[1]

On April 20, 1961 at about 4:00 P.M. the body of Josephine Keane, a Chicago school teacher, was discovered by school personnel in the first floor book room of the Lewis-Champlain Elementary School, 320 W. Englewood, Chicago, Illinois (R. 215-216). Mrs. Keane had been stabbed repeatedly in the side and chest. That she had been sexually molested was also apparent. The police were summoned immediately. Dr. Harold Wagner of the Cook County Coroner's office also arrived at the scene. After making a preliminary examination he ordered the body to the morgue where an autopsy was performed the following day. At the trial Dr. Wagner's testimony, based on his autopsy, fixed the time of death between 8 and 12 A.M. on April 20, 1961 and the cause of death as hemorrhaging caused by the multiple stab wounds (R.1450-1464).

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1. The Petitioner suggests that "There can be no controversy concerning the accuracy of [his] statement of the case" (Br. 14-15) claiming that since the Respondent did not offer a separate version in its Brief opposing the Petition for a Writ of Certiorari and relied for the limited purposes of opposition on the facts contained in the opinion of the Illinois Supreme Court and the Petition, Respondent is somehow precluded from further comment. To this suggestion, Respondent replies only that it does not consider itself so bound and believes a disservice would be rendered to this Court and the issues presented in this case if it did not submit a statement of the case in light of the character and highly argumentative nature of the Petitioner's Statement of the Case.

At about daybreak on the morning after the murder, Detectives Sheldon Teller[2] and Anton Prunkle arrived at the Lewis-Champlain schools where they conducted a search of the premises until about 7:45 A.M. Then they had a discussion with Virginia Fritsch, a teacher, who informed them that she had seen the Petitioner, Lee Arthur Hester, running down the hall alone on the morning of the murder (R. 1082-1085). The detectives inquired as to whether there might be any connection between the Hester boy and Mrs. Keane. Miss Fritsch informed them that Mrs. Keane was reportedly handling a disciplinary case involving Hester and directed the officers to Rita Considine, a clerk in the principal's office, for more information on that subject (R. 1086-1087).

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2. In a professional attempt to comply with Rule 40 of this Court in particular regard to freedom from irrelevant, immaterial, and scandalous matter [40 (h) (5)] the Respondent refrains from a direct reply in the main body of its Brief to an insidious attempt by the Petitioner to enlarge, distort, and altogether mislead concerning the role of former Detective Sheldon Teller of the Chicago Police Department in this case. The Respondent offers no justification for any criminal conduct engaged in by Detective Teller subsequent to the events of the Keane murder. However, Teller was only one of two arresting police officers in this case and his official role went no further. Clearly, it is totally misleading, as well as useless in advancing the cause of the issues to be decided herein, for the Petitioner to devote the amount of space and argument, as he does in his Brief, to the post-trial conduct and affairs of Detective Teller. Without a doubt it borders on being ridiculous, if not scandalous, for the Petitioner to conclude and claim that: "It cannot be overemphasized that it was . . . Teller who set in motion all of the events that culminated in the petitioner's conviction." (Br. 96).

Rita Considine advised Detectives Teller and Pruneckle that Hester was reportedly the subject of a sex complaint registered by another student's parents. This information came to Rita Considine from Josephine Keane (A. 147, R. 1080). Upon hearing this, the detectives went to the third floor classroom of the petitioner, accompanied by Miss Fritsch, where they met Jean Webster, Hester's teacher (R. 1088).

When Hester arrived at approximately 8:00 A.M. Detectives Pruneckle and Teller spoke with him for about 15 minutes outside his classroom (R.1173). At this time the detectives noticed what appeared to be bloodstains on his shirt and pants. The officers asked him how he got the stains and the petitioner gave them the following assorted and conflicting answers: that he got them in a fight with another boy; that he had a nosebleed; that he cut himself with an axe while chopping wood; that he was sawing wood and cut himself with a saw (R. 1126). The detectives then accompanied Hester to the balcony of the school auditorium where bright sunlight was coming through the windows and they could more closely observe the condition of his clothing (R. 1185).

The Petitioner then returned to his classroom, picked up his coat, and rejoined the officers who were waiting

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The other references to and characterizations of the credibility and veracity of Sheldon Teller in the Petitioner's brief will not be further challenged or rebutted save the following: It is significant to note that after the conclusion of the State's case in chief the Petitioner made a motion for a directed verdict of not guilty. (R. 2101). In the course of a long and extensive argument ranging over all the circumstances of the murder, arrest, and trial, and covering practically all the major personalities involved, Detective Teller was *never* mentioned once. Suffice it to say that Sheldon Teller's role in this case has apparently and without justification grown with the passing years.

for him outside the assembly hall door. They then took him down to the principal's office on the first floor and turned him over to Sergeant Frank Follis, a youth officer, at about 8:45 A.M. Thus far Hester had denied any involvement in the Keane slaying (R. 1126; 1139-1140). The Petitioner sat outside the principal's office until about 9:00 A.M., when Officers Thomas and Perkins picked him up and transported him to the Audy Home where they arrived at about 10:00 A.M. The defendant was not interrogated between 8:45 A.M. and 10:00 A.M.; nor had he made any admissions with reference to the slaying. Upon arrival at the Audy Home, Hester's clothes were turned over to Officers Thomas and Perkins for removal to the Crime Lab and the defendant was provided with clothing by the Audy Home (R. 265-268; 311-322; 472-475). Thomas and Perkins left the Audy Home and did not return there until about 4:00 P.M. in the afternoon. After changing his clothes Hester was placed in a room in the Audy Home Infirmary. The Petitioner described his room as a "dungeon room" though he admitted that the room had a bed with a blanket and clean sheets, and that he laid on the bed (R. 550-554).

The Petitioner remained in the room alone and was never interrogated by the police during this time. At noon, Petitioner was given lunch. Hester admitted receiving lunch but claimed he did not eat. At about 4:00 P.M. he was escorted to the interview room of the Audy Home where he saw officers Thomas and Perkins again as well as Sergeants Keating and Killackey. The four officers remained with the Petitioner for about 5 minutes and asked him if he had anything to do with the death of Mrs. Keane. When he denied the killing he was confronted with the results of the Crime Lab tests of his

clothes which turned up a hair, human blood on his clothes and a lipstick smear on his jacket. Hester again denied his guilt.

Officers Keating and Killackey retired leaving the Petitioner alone with Officers Thomas and Perkins. Thomas and Perkins urged him to "get it off his chest" (R. 779-780). Hester then admitted the slaying but said it was an accident. He then related how the "accident" took place (R. 375-378).

Acording to the Petitioner, on Thursday, April 20, he was with Sherman Baker carrying out milk cartons to trash cans. He saw Mrs. Keane bending over a set of books in the book room, opening a package. Her back was to the door. He told Sherman Baker to go up on some stairs and Hester then walked into the book room and tripped over a set of books. Hester carried a knife secured to his arm by rubber bands. As he tripped the knife came into his hand, his hand came around and he stabbed Mrs. Keane in the right side of the back. Both he and Mrs. Keane landed on the floor. Hester tried to get up a couple of times but each time he slipped and each time that he slipped he stabbed Mrs. Keane. Finally Mrs. Keane rolled over. Hester then stabbed her a few times in the chest. After this Hester cut her garters and panties and laid down on top of her. He stated that he did not insert his penis in her vagina, but did admit "squirting" a little. Then he leaned over her to see if she was still alive. He did not hear any heart beat. He then took the keys to the room, walked out of the room, locked the door and dropped the keys somewhere in the school. Later in the day he threw the knife into a lot where they were moving sand and rock (R. 375-379, 991-993, 1891-1895, 2013-2014).

Officer Perkins left the room at about 4:15 or 4:20 P.M. and Officer Killackey returned. Thomas asked the Petitioner to repeat his story for Killackey which he did. Perkins then returned to the room with pictures of the murder scene (R. 787-788) and showed them to Hester who pointed out certain items in the pictures which he had mentioned in his statement. At about 4:30 to 4:45 P.M., Mr. Jordan, the Superintendent, came to the interview room and took the petitioner to another room where he was examined by the Audy Home medical personnel.

Assistant State's Attorney Louis Garippo arrived at the Audy Home at approximately 5:30 P.M. in the evening of the 21st. At approximately 6:30 P.M. he met with the Petitioner in the office of the State's Attorney in the Family Court Building. Court reporter Donald Flannery was present at that time as was Sergeant William Keating of the Chicago Police Department. Mr. Garippo had a conversation with Hester at the time, which was reduced to writing by Flannery. Hester repeated his statement admitting the sex assault and slaying of Mrs. Josephine Keane. Flannery wrote up the statement and returned three copies to Garippo at about 8:15 P.M. Garippo gave one copy each to the Petitioner and Sergeant Keating, keeping the third for himself. He read the statement slowly to Hester after the latter had told him he could read. As they read along the Petitioner noted several mistakes in the transcript which he pointed out. These were subsequently corrected and initialed by the Petitioner. Hester also initialed each page and signed the statement on the last page (R. 1998-2000).

At trial, the State offered evidence that Hester had what appeared to be a knife in school on Thursday, April 20 (R. 1366-1367). Further, three school children testified

that Hester and Sherman Baker did carry out milk cartons sometime after ten in the morning on that day (R. 1279, 1318, 1334). The carrying out of milk cartons was assigned to Sherman Baker and it was his privilege to select another boy to help him (R. 2411). Petitioner contended that Lorenzo Walker had helped Sherman Baker on April 20. All of the Petitioner's witnesses on this point were severely impeached. On April 21 at the Audy Home when Hester said, "Sherman, I took the milk cartons down with you on Thursday", Sherman Baker admitted that he started crying (R. 2450-2451). Another witness said he did not remember who took the milk cartons down on Thursday but he was told by defense counsel to ask Sherman Baker and Lorenzo Walker about it (R. 2925-2928). Lorenzo Walker, a defense witness, had stated on April 25 that Lee Arthur Hester had helped Sherman Baker with the cartons on Thursday (R. 2928).

Dr. Harold Wagner testified that the time of death was between eight A.M. and noon on April 20. He testified that the vaginal swab and slide taken from Mrs. Keane contained many spermatozoa (R. 1459). The Crime Lab analysis of the swab and slide confirmed this finding (R. 1732). Dr. Wagner was of the opinion that the four stab wounds in the right side, under the right arm at the lower end of the rib cage were inflicted before the three stab wounds in the front of the chest (R. 1457-1461). The defense called Dr. Joseph Campbell who testified on the basis of a hypothetical question that the wounds in the front were inflicted first. Dr. Wagner testified that Mrs. Keane's right palm had a smudge of dirt resulting from her hand striking the floor (R. 1457, 1487-1489), thus indicating that Mrs. Keane was attacked from the rear.

The State showed that Mrs. Keane's panties and garters were cut (R. 1476). Semen, which was estimated to be approximately 24-30 hours old on the afternoon of April 21, was found on the underwear of the Petitioner (R. 1727-1728).

Bloodstains on Hester's clothes were found to be human blood of Type A (R. 1752). Mrs. Keane's blood was found to be Type A (R. 1745). The Petitioner's blood was Type O (R. 2070). The Petitioner offered evidence to the effect that the testing of the bloodstains was inconclusive as to type (R. 2657).

A hair with human blood on it (R. 1748-1749) was found on Hester's clothing and was compared to hairs from Mrs. Keane's head and an expert testified that it was very, very remote that the various hairs came from a different origin (R. 1648-1655, 1719-1720). Lipstick traces found on the Petitioner's jacket were similar in all respects to one of the lipsticks Mrs. Keane had in her purse on April 20 (R. 1765-1767).

A metal filing found imbedded in Mrs. Keane's clothing was found to consist of silver and a plastic coating. Metal filings found in Hester's pockets were similar and were found to consist of silver and a plastic coating (R. 1784-1788).

At the close of the evidence and after argument the jury found the Petitioner guilty and fixed his punishment at fifty-five years in the penitentiary.

The facts are further elaborated in the argument.

SUMMARY OF ARGUMENT

The confessions in this case were clearly given within constitutionally permitted limits. Applying the "totality of circumstances" test to the statement of Petitioner, it is readily apparent that the voluntariness and trustworthiness of the confessions cannot be seriously questioned. Considering the limited police questioning of less than an hour, together with the testimony elicited on the motion to suppress the confessions, it becomes manifest that the circumstances surrounding the questioning of the Petitioner in no way suggest coercion of any sort.

The calling for the imposition of a *per se* exclusionary rule as to a youthful offender's confession is merited neither by the facts of this case nor any constitutional doctrine heretofore announced by this Court. Furthermore, such a conclusion and holding would adversely effect the already precarious balance within our criminal justice system. In addition, already existing standards regarding juvenile confessions adequately protect the rights of those involved when one considers the burden the prosecution carries in attempts to establish the freedom of such statements from constitutional defects.

The Petitioner stands convicted of a vicious crime by overwhelming testimonial and scientific evidence. There exists absolutely no measure of reasonable doubt that would justify inquiry by this Court into an area where the Supreme Court of Illinois gave extensive and complete review. Attacks made by Petitioner in this Court on the sufficiency of the evidence collapse when compared with the record made below.

The claim that the Petitioner's post-arrest custody violated the constitution because he was not promptly taken before a magistrate for a preliminary hearing is not properly before this Court. Since this point was never presented below, either at trial or on appeal, the Respondent suggests that this Court is without jurisdiction to consider the question.

The psychiatric testimony sought to be introduced at trial by the Petitioner was both incompetent and improperly offered. Neither from the evidence in the record, nor from any examination of the Petitioner, was the offered psychiatric testimony correctly derived and the trial judge properly excluded such self-serving and worthless testimony.

The scope of discovery allowed in this case precludes any conclusion other than one which shows that the defense had access to the records and statements of all State witnesses and a complete freedom of inquiry regarding the nature of the State's case. Considering the Illinois adoption of the Jencks Act rule, and the application of the same to this case, the claim of discovery limitation is without merit.

The Petitioner's arrest was grounded in more than sufficient probable cause because the facts and circumstances made known to the arresting officers mandated their actions. In addition to information obtained from reliable citizens, the arrest of the Petitioner was supported by his physical appearance, connections with and knowledge of the deceased, and his response to the initial pre-custody

general inquiry. Thus, any acquisition of his clothes by police officials was not the result of an illegal search, as the Petitioner suggests, but rather the incident of a custody which was constitutionally permissible.

ARGUMENT

I.

THE ORAL AND WRITTEN CONFESSIONS GIVEN BY PETITIONER TO THE POLICE WERE FREELY AND VOLUNTARILY MADE AND DUE PROCESS DOES NOT COMMAND THE ABSOLUTE EXCLUSION OF JUVENILE CONFESSIONS TAKEN OUTSIDE THE PRESENCE OF COUNSEL.

(Answer To Petitioner's Points I (a), I (b) & II)

The arguments made by Petitioner concerning the validity of his confessions under Points I(a) and (b) of his Argument are interwoven, and, at times, confusingly so. Thus, in his Summary of Argument, Petitioner states "The confessions must therefore be excluded either under the conventional principles . . . in the factual situation here" (Br. 15-16), and then, "or because *due process* and the *fundamental fairness* it encompasses is violated by the *incommunicado* taking of a confession *from a child*" (Br. 16) (emphasis added); and, finally, "or (and this is the preferable rule) because the confessions of children must be *per se inadmissible* so that there shall not exist the right to take a confession from a juvenile, at least where the same can be used in a criminal proceeding against him" (Br. 16) (emphasis added). A constitutional rationale for this last contention is not stated[3].

Similarly, in the body of his Argument, Petitioner first says that "The mere taking of a confession from such an

3. Petitioner does, however, make some later reference to "untrustworthiness" and the supposed inefficacy of *Miranda* warnings for juveniles. See Br. 16.

individual as Lee Arthur Hester is violative of due process even if the safeguards described in *Miranda* v. *Arizona*, 384 U.S. 436, are scrupulously adhered to" (Br. 24). The argument then immediately recedes to the lesser proposition that "The petitioner was so young and so incapable that to take a confession from him *in any manner* should cloak the same with the *presumption* of *involuntariness*" (Br. 24-25) (emphasis added).

Petitioner next argues that the "totality of circumstances test . . . if properly applied by the Supreme Court of Illinois, would have resulted in reversal of the petitioner's conviction" (Br. 26). This, in turn, is followed by the claim that "There is therefore, no doubt that where a defendant is as young as Hester is, the rule of law to be applied (without regard to the requirements of *Miranda* v. *Arizona*) is that *irrespective of the pressure applied* to bend the will, *failure to provide counsel* (or some other friend) will render a confession taken during secret detention of one so young inadmissible" (Br. 33) (emphasis added). The argument then advanced is that this Court held in *Application of Gault*, 387 U.S. 1 (1967), that confessions taken from juveniles without *Miranda* warnings are "'testimonially untrustworthy' (at 387 U.S. 45) and must be excluded from evidence" (Br. 35)[4].

Next follows a general complaint about the adequacy of the Illinois procedural formula employed to test the

4. This Court did not so hold in *Gault*. Petitioner's quoted reference comes, not from this Court's language in *Gault*, but from Wigmore's discussion of the ancient, and now discarded, rule of "untrustworthiness", where no reference either to juveniles or to the privilege against self-incrimination is made.

voluntariness of confessions both generally and in its application to this case (Br. 38-40). The argument is then made that the confessions must be rejected under the "totality of circumstances" rule because "credence" must be given to petitioner's controverted testimony of coercive threats (Br. 40-41)[5]. And, finally, under Point 1(b), Petitioner specifically argues for the application of a *per se* rule of inadmissibility of juvenile confessions upon the grounds (1) that they are "untrustworthy", and (2) that *Miranda* now requires warnings, and since such warnings cannot be "adequately comprehended by the vast majority of children", no valid waiver of constitutional rights may be obtained (Br. 42-47).

Despite the difficulty of assessing Petitioner's often jumbled claims, and demi-arguments, we believe that a fair reading of his entire argument under these headings makes clear two central themes. First, applying traditional principles of involuntariness case law, the confessions taken under *these* circumstances from *this* Petitioner were coerced. Second, that as a matter of constitutional dogma, and without reference to this Petitioner, confessions taken from juveniles are always inadmissible. So understanding Petitioner's arguments, we proceed to a consideration of their merits.

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5. Though neither the trial court, nor the Supreme Court of Illinois, for the reasons stated in the latter's opinion, credited this testimony. "So we put to one side the controverted evidence . . . [and take] only the undisputed testimony", *Haley v. Ohio*, 332 U.S. 596, 597-98 (1948) (opinion of Mr. Justice Douglas).

A.

Petitioner's Confessions Were Voluntary. They Were Not Coerced.

In essence, the circumstances surrounding the taking of Petitioner's oral and written confessions—as found by the trial court and the Supreme Court of Illinois from the *credited* evidence—are these.

Petitioner was taken into custody outside his classroom shortly after 8:00 A.M. on April 21, 1961 by officers Teller and Prunkl[2] who questioned him concerning the murder until approximately 8:45 A.M. when they turned him over to Sergeant Frank Follis of the youth division. No admissions of guilt were made during this 45 minute period.

Petitioner was in the custody of Sergeant Follis for approximately 15 minutes until he was turned over to the custody of officers Thomas and Perkins who then took him to the Audy (Juvenile) Home. No interrogation took place during this 15 minute period.

After arrival at the Audy Home, Petitioner's clothes were taken for laboratory examination. He was given other clothing to wear and placed in a room in the infirmary which contained a bed, mattress, table, stool, radiator, light fixture and window. Lunch was provided. Petitioner remained alone in this room from approximately 10:00 A.M. until 4:00 P.M. No interrogation took place during this 6 hour period.

At 4:00 P.M., Petitioner was taken to an interview room. Here, officers Thomas, Perkins, Keating and Killackey talked to him for 5 minutes. This time was spent introducing the officers to Petitioner and, after he denied complicity in the crime, revealing to him the results of certain

laboratory examinations which had been performed on the clothes worn by him at the time of arrest.

After the 5 minute period, officers Killackey and Keating left the room. Requested by officers Thomas and Perkins "to tell us about it and get it off his chest," Petitioner immediately told them that he had stabbed Mrs. Keane, but claimed that it was the result of an "accident".

After describing the "accident" in some detail, Petitioner was shown several photographs of the murder scene. Petitioner then pointed out items in the pictures which he had mentioned in his oral statement.

At 5:00 P.M., Petitioner was given a medical examination and taken to the Family Court Building next door to the Andy Horne. At 6:30 P.M., he was requestioned by Assistant State's Attorney (now Judge) Louis Garippo in the presence of a court reporter and Sergeant Keating. He repeated his previous confession. At 8:15 P.M., three typed copies of the confession were returned and Petitioner followed along while the confession was slowly read aloud to him. He then signed the confession, and initialed those places in it where he had pointed out mistakes which were then corrected.

In sum, therefore, Petitioner's first confession—an oral statement—was given after only five minutes of questioning. Prior to this 5 minute period, Petitioner had not been in the custody or presence of police officers for some 6 hours. And the 45 minutes of questioning which preceeded this 6 hour period produced no admission of guilt. Petitioner's second confession—a formal, typewritten statement—was given about 1½ hours after the oral statement, and, during this 1½ hour period, Petitioner was not questioned.

Putting aside, for the moment, the character of Petitioner and his particular responses to police custody and questioning, it may at once be seen that this case is neither *Haley* v. *Ohio*, 332 U.S. 596 (1948), an opinion upon which Petitioner so heavily relies, nor controlled by it. This is so for several reasons.

First, Haley, a 15 year old boy, was questioned for 5 consecutive hours, by relays of police, "through the dead of night", i.e., from about midnight until 5:00 A.M.

Second, a reading of the opinion of Mr. Justice Douglas[6] in that case makes clear that the police characterization of the atmosphere of this lengthy interrogation was simply not credited[7].

Third, the *holding* of the opinion is specifically bottomed upon five elements, three of which are not present in this case. Mr. Justice Douglas said:

> "[1] The age of petitioner, [2] the hours when he was grilled, [3] the duration of his quizzing, [4] the fact that he had no friend or counsel to advise him, [5] the callous attitude of the police towards his

6. There was no opinion for the Court in *Haley*.

7. ". . . he was kept incommunicado for over three days during which the lawyer retained to represent him twice tried to see him and twice was refused admission. A photographer was admitted at once; but his closest friend—his mother—was not allowed to see him for over five days after his arrest. [These events] . . . . show such a callous attitude of the police towards the safeguards which respect for ordinary standards of human relationships compels that we take with a grain of salt their present apologia that the five hour grilling of this boy was conducted in a fair and dispassionate manner." 332 U.S. at 600.

> rights *combine* to convince us that this was a confession wrung from a child by means which the law should not sanction." (332 U.S. at 600-01) (emphasis added.)

Of these *five* elements, *all* of which the opinion characterizes as essential to the holding,[8] only *two* are present in this case. Haley was 15; Petitioner was 14. Neither had counsel.

The opinion's assessment of Haley's treatment by the police is easily drawn, where it is not precisely stated, from the phrases repeated again and again by its author: "the dead of night"; "relays of police"; "ready victim of the inquisition"; "overpowering presence of the law"; "questioned him hour after hour"; "disregard of the standards of decency"; "callous attitude of the police"; "behind closed doors in the dead of night"; "the hours when he was grilled"; "confession wrung from a child"; "methods which flout constitutional requirements"; "inquisitorial practices".

In all candor, Petitioner, were he not blinded by the hyperbolic character of his Brief describing the atmosphere surrounding the taking of the confessions in this case, should admit that such phrases cannot fairly be applied here. And even if he does not, this Court must so find. *Haley* v. *Ohio* does not apply.

Petitioner also relies upon the dissenting opinion of Mr. Justice Schaefer in *People* v. *Richardson*, 207 N.E. 2d 478 (Ill. 1965). Without examining the validity of the dissent's somewhat mechanical hypothesis that a defendant is entitled to a lawyer when the police employ a

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[8] Cf. *Escobedo* v. *Illinois*, 378 U.S. 478, 490-91 (1964) and *Frazier* v. *Cupp*, ——— U.S. ———, 5 Cr. L. Rep. 3041, 3043 (April 22, 1969).

lawyer to obtain a confession—the short answer is that the rule proposed there is premised explicitly upon a reading of *Escobedo* v. *Illinois*, 378 U.S. 478 (1964)[9]. Hester's confessions were given on April 21, 1961. *Escobedo* does not apply to these confessions. *Johnson* v. *New Jersey*, 384 U.S. 719, 721, 733-34 (1966).

Haynes v. *Washington*, 373 U.S. 503 (1963) is also of little comfort to Petitioner. For *Haynes* is a coerced confession case in the classic sense.

In *Haynes*, the petitioner first orally confessed to a robbery some 30 minutes after the commission of the offense and while he was being transported to the police station. A short while later, he repeated an oral confession while being held at the station. The next morning, a third confession followed. This confession was transcribed and petitioner was taken to the prosecutor's office where he gave a fourth statement. He then signed the third statement but refused to sign the fourth.

Petitioner's first three statements, both oral and written, were admitted in evidence at his trial. This Court, after examining the record, found that the third, or signed, confession was coerced because prior to its making and signing, petitioner had not been allowed to call his wife and, in fact, was told that he could call his wife only after

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9. "In my opinion the joint statement that was taken in question and answer form by an assistant State's Attorney was inadmissible *under the decision of the Supreme Court of the United States in Escobedo* v. *Illinois*, 378 U.S. 478, whether the opinion in that case is read broadly or narrowly." *People* v. *Richardson*, 32 Ill. 2d 472, 477, 207 N.E. 2d 478, 481 (1965) (dissenting opinion of Mr. Justice Schaefer) (emphasis added). The Court will note that Mr. Justice Schaefer did not rely upon his *Richardson* formula in dissenting in this case.

the police had completed the interrogation process. The Court said:

> "Haynes contends that the confession was involuntary and thus constitutionally inadmissible, because induced by police threats and promises. * * * The uncontroverted portions of the record thus disclose that the petitioner's written confession was obtained in an atmosphere of substantial coercion and inducement created by statements and actions of state authorities. * * * Haynes' undisputed testimony as to the making and signing of the challenged confession used against him at trial permits no doubt that it was obtained under a totality of circumstances evidencing an involuntary written admission of guilt.
>
> * * * The petitioner at first resisted making a written statement and gave in only after consistent denials of his requests to call his wife, and the conditioning of such outside contact upon his accession to police demands. Confronted with the express threat of continued incommunicado detention and induced by the promise of communication with and access to family, Haynes understandably chose to make and sign the damning written statement; given the unfair and inherently coercive context in which made, that choice cannot be said to be the voluntary product of a free and unconstrained will, as required by the Fourteenth Amendment." 373 U.S. at 513-14.

There is no question that confessions which are the product of police threats or promises are involuntary. *Lynumn v. Illinois*, 372 U.S. 528 (1963). There is no question that the majority of this Court found, in *Haynes*, that his written confession was the product of police threats and promises. But there is no credited or unrebutted evidence in Hester's case to compel the conclusion that Petitioner's confessions, either oral or written, were the product of such police malfeasance.

Under the facts of *Haynes*, it was irrelevant that his oral confessions, admitted without objection, were not the product of coercion. For it has long been the rule, and we do not challenge it, that where a coerced confession infects the judgment of a state court, the conviction must be reversed without regard to whether there is sufficient other evidence, including valid and admissible confessions, to support the conviction. *Rogers* v. *Richmond*, 365 U.S. 534 (1961); *Haynes* v. *Washington*, 373 U.S. 503, 518 (1963). The judgment of conviction in *Haynes* was the product of both admissible and inadmissible confessions. The judgment of conviction in *Hester* rests upon two confessions, but both of these confessions were valid and admissible. *Haynes* v. *Washington* does not apply.

We come, then, to a consideration of Petitioner's mainstay—*Gallegos* v. *Colorado*, 370 U.S. 49 (1962). In *Gallegos*, the petitioner, a 14 year old boy, was taken into custody for the murder of an elderly man. He gave an oral confession to a police officer who, noticing him on the street because he fit the suspect's description, asked him to sit in the police car and then questioned him. Confessing immediately, petitioner was taken to the Juvenile Hall where he repeated his oral confession. The next evening, petitioner again confessed and the officer took notes of his confession, which were then signed by petitioner. Five days later, petitioner gave a formal confession which was transcribed and signed. All confessions—both oral and written—were admitted in evidence at the trial.

The Court's opinion in *Gallegos* is, at best, difficult to comprehend; and, in part, unsatisfactory. It can be, and has been, read at several levels. We shall treat all of them.

that, even if construed as these provisions traditionally have been, they contain an aggregate of restrictions which seriously limit the power of society to solve such crimes as confront us in these cases. Those restrictions we should not for that reason cast aside, but that is good reason for indulging in no unnecessary expansion of them.

I doubt very much if they require us to hold that the State may not take into custody and question one suspected reasonably of an unwitnessed murder. If it does, the people of this country must discipline themselves to seeing their police stand by helpless while those suspected of murder prowl about unmolested. Is it a necessary price to pay for the fairness which we know as 'due process of law'? And if not a necessary one, should it be demanded by this Court? I do not know the ultimate answer to these questions; but, for the present, I should not increase the handicap on society." *Watts* v. *Indiana*, 338 U.S. 49, 61-62 (1949). (concurring opinion.)

Criminal defendants, rich as well as poor, young as well as old, enjoy more protection from unjust conviction today than at any time in our history. "The terrible engine of the criminal law" (*Culombe* v. *Connecticut*, 367 U.S. 568, 581), has been repeatedly braked by this Court, by state courts and legislatures, and by fair and honest administration of the law by prosecutors and police. We need now to guard against its derailment.

II

THE PETITIONER'S GUILT WAS ESTABLISHED BEYOND ALL REASONABLE DOUBT BY COMPETENT EVIDENCE.

(Answer To Petitioner's Point I(d))

Despite the Petitioner's claim that the State's case "fell far short of proving [Hester] guilty" (Br. 53), what

he really tries to bootleg into the review of this case is a thinly veiled charge that the Petitioner's conviction is the result of some massive police-prosecution conspiracy. This is made eminently clear when one reads in the Petitioner's Brief that "It is beyond imagination to comprehend the lengths the prosecution went to secure the defendant's conviction." (Br. 53).

Now while the Petitioner is of course free to pursue whatever appellate strategy he wishes, he is also accountable for whatever resultant inconsistencies and illogical positions he causes to appear. Therefore, unless one were to conclude that one of the largest prosecution agencies in the country, supported by one of the largest police departments, is manned by utter fools, it stands to reason that it is most unlikely that they would go to any "lengths" to secure a conviction and yet fall "far short" of their goal. Simply put, it ill behooves the Petitioner to suggest a most contrived case while claiming insufficiency.

It does little for a review of the determination of guilt for Petitioner to suggest that the lipstick stain on his jacket is "ludicrous" (Br. 54), and that the analysis of such evidence should be labeled a "deceitful approach" (Br. 54); that the blood testimony is "unbelievable" (Br. 55), and that "a scientific hoax was . . . perpetrated" (Br. 61); to question whether produced evidence ever in fact existed ("If there was a hair") (Br. 61); to claim that the use of accepted scientific procedures, (bombardment of metal particles) is a "fantasy" (Br. 62), and to describe as "incredible" (Br. 64) the version of the murder as stated by the Petitioner in his confession.

The Respondent could counter in part the claim of a rush to judgment and conviction of an innocent youth, by stating that the then State's Attorney of Cook County presently sits as a Justice of the Supreme Court of Illinois, that the trial judge today serves as a Judge of the United States District Court, that the chief prosecutor subsequently became the State's Attorney and today is a Justice of the Appellate Court of Illinois, that the Assistant State's Attorney who took the statement from Hester is now an Associate Judge of the Circuit Court of Cook County and that the head of the Chicago Crime Laboratory was, in addition to being a police officer, an attorney and chemist. However, this is not the Respondent's answer to the Petitioner's broadside assault on the conviction. It is only mentioned for the purpose of maintaining some perspective when assessing the Petitioner's wholesale and unfounded allegations regarding the presentation of the State's case and the conduct at the trial.

The Petitioner stands condemned because of his own statements and conduct as a witness and because of the overwhelming circumstantial evidence presented by the State.

Specifically Petitioner attacks the sufficiency of the evidence on two grounds. First, he argues that the written confession was completely untrustworthy. Then he launches his blanket attack on the scientific evidence.

The circumstances surrounding Hester's oral and written statements, outlined above in the Statement of the Case and Argument, were non-coercive. Of equal importance in assessing the voluntariness and trustworthiness of the statements is the fact that when Hester took the stand and testified concerning the circumstances of his arrest and confession he proved himself an unmitigated liar.

Attempting to paint a portrait of coercion, he testified that he was questioned by numerous police officers outside his classroom at the time of arrest—eight or nine of them, he said (R. 458). Caught up with the force of his own narrative he made the mistake of identifying in court an Assistant State's Attorney as being one of the police officers who participated in his alleged inquisition. (R. 457). In fact, there were only the two arresting officers outside the schoolroom. Neither they nor any school teacher saw other policemen in the hall at the time. There were none. (R. 621, 639, 680, 686, 690-91, 2830, 2845).

Petitioner told several useless lies, which could in no way have aided his defense, when he first denied signing the confession or placing his initials on the pages (R. 507), a foolish tactic for one who later conceded the genuineness of the documents (R. 585-586).

Hester testified that Sgt. Killackey spat in his face at the police station (R. 608-9). But on cross-examination he was forced to concede that that wasn't true (R. 612).

The retreat of Hester's credibility became a rout when he testified that Officer Pruneckle kicked him in the left leg at the time they first met outside Hester's classroom (R. 453). As the trial judge stated in his findings of fact, it is "just inconceivable" that an officer would walk up to Hester in the hallway of the school and proceed to kick him in the shin the moment they met. All other persons present denied that this occurred, including three school teachers who were present (R. 639, 679-80, 687, 691). Significantly, Hester was to report this alleged incident to no one including the doctor he encountered at the Audy Home (R. 2392). This tawdry episode con-

cluded when the State introduced a newspaper photograph of Hester with his right, not his left, pants leg pulled up displaying the injured limb to his attorney (R. 2396-97, 2968).

Hester testified that he was placed in a "dungeon" at the Juvenile Home. That description paled when it was revealed that the "dungeon" was a clean, lit, furnished room in the Home's infirmary (R. 2884-85).

Testimonial conflicts of this kind only serve to enhance Respondent's argument that Hester's confession was voluntary. They unquestionably weighed in the minds of both the trial court and jury who chose not to believe Hester.

Petitioner strongly intimates that his statements were dictated to him by the police. He argues, for example, that the language of the written statement is inconsistent with his manner of speech; that he would never say he went to the bookroom at "two minutes to ten." Allegedly, Hester was too deficient "in education and sophistication" to use such language. However one of the first phrases out of his mouth on direct examination was that he went to school at "three minutes before eight" (R. 447-448). He said that his class took a toilet recess at "ten minutes before ten" (R. 2341) and that he was sent home at "3 or 4 minutes before twelve (R. 2346). The fact is that Hester does talk this way and this use of the language in his written statement does not indicate that words were put in his mouth.

Defense counsel argued at trial that Hester was a very dependent individual, afraid of older and larger males, abnormally afraid of physical injury and extremely gullible. Significantly, Hester's school records, which defense counsel introduced into evidence and insisted on reading

to the jury, showed that Hester was openly defiant to his male and female superiors at school (R. 2259). The school records also indicate that Hester had been encouraged by his parents to fight back if picked on, and he did just that (R. 2256-57). Hester was aggressive. (R. 2254). His demeanor on the witness stand displayed the same defiant attitude his teachers had come to know:

> Q. (By Mr. Stamos): Was your underwear in the picture when you looked at it?
>
> A. You got a picture. You look at the picture and find out. (R. 602; see also R. 597-598)

Indeed, Hester kept referring to the 6 foot, 225 pound Detective Pruneke as the "little one," and the "little one who kicked me." (R. 435-55). This is quite surprising in light of counsel's attempt to picture the Petitioner as a small boy who fears large men. For an individual that the defense claims is retarded, Hester displayed a remarkably retentive memory and a keen eye for detail (R. 451, 460, 468, 569, 470, 475).

The essential contention that the statements were police constructs which Petitioner was forced to recite is incredible. Surely the police could have done better by forcing Hester to say something other than "it was an accident." Surely if the police had dictated Hester's statement, there would be no inconsistencies at all between the statement and the known facts. Surely if the police were willing to fabricate they would have lied about warning Hester of his constitutional rights.

It is rather obvious that the murder of Mrs. Keane probably did not take place in the way that Hester described it. It was most certainly not an "accident," as he first stated. The ridiculous story of falling over books with a knife magically appearing in his hand was undoubtedly

disregarded by judge and jury. This was a patent attempt by Hester to exculpate himself. Likewise, Hester admitted lying on top of Mrs. Keane, but denied sexual penetration in a further attempt to exculpate himself.

It is common knowledge that a person who chooses to confess to a crime will often use the occasion to brighten his image to the extent that is possible. Indeed the extent to which this was done is an indication of the voluntariness of and lack of suggestion in Hester's statements. Hester admitted his presence at the scene of the crime when confronted with the physical evidence, and he admitted the act. Since he chose to deny culpability the burden fell upon him to tell a reasonable story or be judged by its improbabilities. A jury may accept all, parts, or none of a confession. Hester's statement was largely corroborated by the facts. The method of killing (multiple stab wounds), the fact that Mrs. Keane was killed in the bookroom, the contents of the bookroom, the fact that the bookroom door was locked (it does not lock automatically) and the sexual aspects of the crime are all corroborative of Hester's admissions.

Petitioner further contends that the physical evidence did not support the guilty verdict.

There is no question that technician Principe, who typed the bloodstains at the Chicago Crime Laboratory, and Dr. Weiner, the defense blood expert who ran no tests of his own, were not in complete agreement. The jury evidently did not accept Dr. Weiner's conclusions, possibly because they were dubious about his objectivity. The doctor admitted writing a letter to defense counsel in which he coached counsel to "harp on" Principe's failure to determine sub-groups; while on the stand he admitted that he could not expect Principe to determine the sub-groups from the stain (R. 2713-2720).

The jury may have been doubtful because Dr. Weiner admitted that he did not know how much blood Principe had for his test and they may have looked askance at his less than subtle efforts to endorse himself as fair and impartial.

What is incredible here is that Petitioner's counsel argues that the stain was of blood type O while their own expert could only say that the result was inconclusive[28]. Dr. Weiner was of the opinion that the test had simply been conducted improperly and that the stain could have been any type, including A, which was Principe's conclusion. (R. 2656-2657). Certainly the doctor's testimony, consisting of answers to hypothetical questions, does not support the novel theory of counsel nor would it place the jury under compulsion to reject the findings of Principe.

In regard to the other physical evidence presented by the State, Petitioner offers nothing in rebuttal save the comments and opinions of counsel. For example, it was scientifically proven that the metal particles found in the Petitioner's pockets were identical to those found in the waistband of the victim's panties. The particles had exactly the same refractive index and solubility. They were all from the same source which contained a free silver base covered by a protective plastic coating, such composition indicating jewelry. The Illinois Supreme Court found:

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28. In the Supreme Court of Illinois they argued with equal vigor that Principe should have found type AB. That assertion has been abandoned in favor of the present one because if the stains were AB, Hester's explanation of the presence of bloodstains was perjurious and the axe handle on which he allegedly splintered himself was a phony exhibit, since Hester's blood type is O.

> "The defense argument that there was no way such a particle from the defendant's pocket could have come to be imbedded in the back of the deceased's waistband is exceedingly questionable in a case involving a forcible rape, particularly since defendant's statement indicates the decedent 'rolled' over." 237 N.E. 2d at 482.

The lipstick stain on the Petitioner's jacket and the victim's lipstick, found in her purse, were subjected to ultraviolet inspection and found to be similar in color, reflection, and fluorescence. Similarly, when a gray hair from the victim's head was compared to the hair found on Petitioner's jacket both were determined to be caucasoid in origin, devoid of pigment, containing the same density, refractive indices and medullary structure. In light of Technician Hazen's testimony that it was very, very remote that both hairs tested could have different origins, it is impossible to regard seriously counsel's unsupported assertions that the hair could have come from "anywhere."

Understandably the position can be taken that no one item of scientific evidence or any other individual piece evidence is generally overwhelming in and of itself, yet when one considers the cumulative effect of all the evidence in this case the only certain conclusion is that the guilt of the Petitioner was proved beyond all reasonable doubt. Noteworthy in this connection are the observations of the Supreme Court of Illinois in reviewing the State's case at trial. Commenting specifically on the scientific evidence the court stated:

> "The scientific evidence presented by [the State] aside from the testimony regarding blood identification was impressive and without substantial contradiction." 237 N.E. 2d at 482.

The Court concluded:

> "In our opinion the evidence, when viewed as a whole, provides an ample basis for the jury verdict." 237 N.E. 2d at 483.

And the dissenting opinion of Mr. Justice Shaefer never even suggests the possibility that the evidence was insufficient.

Thus when the supporting testimony of witnesses who saw Hester leave his room; the testimony of the witness placing Hester in possession of a knife; and the statements of the Petitioner admitting the stabbing and sexual abuse of Mrs. Keane are combined with the scientific proof, it is manifest that the verdict was supported by overwhelming and competent evidence.

III.

THE QUESTIONS OF WHETHER DEFENDANT'S POST-ARREST CUSTODY VIOLATED THE McNABB-MALLORY RULE, AND WHETHER THAT RULE APPLIES TO THE STATES, ARE NOT BEFORE THIS COURT.

(Answer To Petitioner's Point I(c))

Petitioner argues that his post-arrest custody was in violation of the constitution because he was not promptly taken before a magistrate for a preliminary hearing (Br. 48-52). The consequence of this supposed violation is said to be the suppression of his confessions. This claim is based upon the premise that the federal rule of procedure set forth in *McNabb* v. *United States*, 318 U.S. 332 (1943) and *Mallory* v. *United States*, 354 U.S. 449 (1957) is now binding upon the states through the due process clause.

This point was never raised or passed upon in the trial court and was never raised or passed upon by the Supreme Court of Illinois on appeal. It appeared for the first time in this case when it was smuggled into the Petition for Certiorari. Under these circumstances, the Court is without jurisdiction to consider this question and it should not do so. *Cardinale* v. *Louisiana*, —— U.S. ——, 5 Cr. L. Rep. 3005 (April 1, 1969). Accordingly, as to this point, the writ of certiorari should be dismissed for want of jurisdiction.

IV.

PROFFERED TESTIMONY OF THE DEFENSE PSYCHIATRIST WAS CLEARLY INCOMPETENT AND WAS PROPERLY REFUSED BY THE TRIAL COURT.

(Answer to Petitioner's Point III(a))

The Petitioner claims a denial of a fair trial on due process grounds alleging he was prevented from establishing that a psychologically coerced confession existed in this case. Arguing that he was precluded from questioning his psychiatrist on the susceptibility of Hester to psychological and mental coercion, the Petitioner cites *Blackburn* v. *Alabama*, 361 U.S. 199 (1960) and *Culombe* v. *Connecticut*, 367 U.S. 568 (1961).

Aside from the fact that Petitioner has never been able to establish any conditions precedent to a psychologically coerced confession, and before proceeding to the issue of whether the defense psychiatrist was qualified to testify, it must be noted that the above cases from which the Petitioner attempts to draw support are so far factually removed from the instant cause that reference to them is meaningless.

In *Blackburn* this Court found that the accused was questioned for eight or nine consecutive hours and moreover concluded that "the evidence indisputably establishes the strongest probability that Blackburn was insane and incompetent at the time he allegedly confessed." 361 U.S. at 207. In *Culombe*, another case totally unlike this case, the accused "was detained in the effective custody of the police for four nights and a substantial portion of five days before he confessed" and was found to be a "mental defective of the moron class" and "wholly illiterate." 367 U.S. at 620, 625.

The record of this case not only defies comparison with *Blackburn* and *Culombe*, but instead invites the conclusion that the Petitioner, both by his trial demeanor and testimony, as well as his limited exposure to police questioning, was far from the psychologically susceptible subject this Court has previously found victim of coercion.

The Petitioner's entire argument with reference to the offered testimony of Dr. Marvin Ziporyn, a psychiatrist hired by the defense to testify on petitioner's behalf, presupposes that Ziporyn was in a position to give competent testimony. In fact, he was not. An examination of the record (not undertaken in Petitioner's Brief for reasons which shall become obvious) discloses a most unsavory relationship between Ziporyn and this case.

On July 6, 1961, some 2 months after the murder of Mrs. Keane, defense counsel requested the trial court to allow Dr. Ziporyn to draw blood from the Petitioner:

> "The Court: Whatever medical attention you want him to have
>
> Mr. Feldmann: It's not even for medical attention, Judge.
>
> Mr. Kaplan: I think we have a right to take his blood, your Honor." (R. 103).

When the motion was heard, counsel for Petitioner stated "we want to extract his blood" (R. 102). The State asked to be present (R. 105). Defense counsel objected stating, "Our word must mean something to the court." (R. 105). The court allowed the defense motion. Later the same day defense counsel informed Warden Johnson of the Cook County Jail that they wanted to make a physical examination and draw blood (R. 133). Defense counsel and Ziporyn were then allowed to examine the petitioner in the presence of County Jail Nurse Goodloe. When Ziporyn attempted to enter a room with Hester and close the door, Nurse Goodloe protested, whereupon defense counsel spoke to Warden Johnson over the phone. Counsel then told Nurse Goodloe that the Warden said it was all right for Ziporyn to be alone with Hester (R. 142). Warden Johnson specifically denied giving any such permission (R. 146).

Ziporyn's interview ended abruptly. While alone with Hester, Ziporyn injected him with 7½ grains of sodium amytal in violation of jail rules (R. 134). Hester lapsed into a catatonic state, was unable to walk and had to be placed in protective restraints. (R. 141-142). No blood sample was taken. Thereafter the court censured defense counsel for deliberately misleading the court (R. 149).

Ziporyn indicated that he took no notes during his examination (R. 123). He testified that he would require several more interviews before he could arrive at a conclusion as to Hester's mental condition (R. 124). Yet Ziporyn only interviewed Hester on one other occasion (C. L. Rec. 76).[29]

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29. This situation should be contrasted with the facts of *In the Matter of W. and S.*, 19 N.Y. 2d 55, 224 N.E. 2d 102, cited and quoted by the Petitioner (Br.

Hester's dealings with Ziporyn represent the worst sort of marriage between law and psychiatry. When Judge Canel ordered a Behavior Clinic Examination to determine if Hester was competent to sign a change of venue petition, defense counsel objected (R. 19-22), and it is undisputed that Hester did not cooperate with the Behavior Clinic. Yet when the defense sought to use psychiatrists for their own purposes Hester was apparently cooperative. Furthermore, the Petitioner sought to use the nonprobative and incredible technique of proving his innocence by asking of Ziporyn whether the murderer had to be a psychotic and then asking if the defendant was sane, hoping to receive answers of yes. The defense did elicit an opinion that Hester was legally sane (R. 2321), but was precluded from eliciting an opinion as to the personality of the murderer. Nevertheless, within the presence and hearing of the jury, defense counsel stated: "The crime was committed by a psychotic" (R. 2323).

Based solely on the irregularities arising out of Ziporyn's association with the case and the dubious value of an opinion based on what Ziporyn previously stated were less than the required number of interviews, the court was justified in restricting his testimony.[30]

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82) where the Court of Appeals of New York, in relying upon the testimony of a psychiatrist at a Family Court proceeding observed that the physician "had *many* conversations with Gregory and . . . formed a diagnosis that Gregory was a schizophrenic." 224 N.E. 2d 102, 105 (emphasis added).

30. It would appear that unorthodox relationships with criminal cases are not unique where Dr. Marvin C. Ziporyn is concerned. From September, 1965 to March, 1967 Ziporyn was employed by the County of Cook to be a psy-

Furthermore, there were sound legal reasons why the trial judge was, in fact, compelled to restrict Ziporyn's testimony.

First, any portion of Ziporyn's testimony which might have been based upon what Hester may have said under the influence of sodium amytal would be as inadmissible as the results of a lie detector test. Such testimony is excluded from evidence because of scientific disagreement as to the effect and accuracy of so-called truth serums. *People* v. *Jones*, 52 Cal. 2d 636, 343 P. 2d 577 (1959); *State* v. *Cypher*, 92 Idaho 159, 438 P. 2d 904 (1968); *State* v. *Lindemath*, 56 N.M. 257, 243 P. 2d 325 (1952). In *State* v. *Hudson*, 289 S.W. 920 (Mo. 1926), it was held that what a defendant told his psychiatrist while under the influence of a truth serum was inadmissible because it constituted a self-serving declaration and was rank hearsay. In accord: *People* v. *McNichol*, 100 Cal. App. 2d 554, 224 P. 2d 21 (1950).

Lindsay v. *United States*, 237 F. 2d 893 (9th Cir. 1956), presents a situation where the prosecution's use of sodium pentothal-induced statements resulted in reversal. The Court of Appeals held that it was error to admit a tape recording of a sodium penothal interview between a psychiatrist and the chief prosecution witness, even as a prior consistent statement for the limited purpose of rehabilitating the impeached witness. The court based its opinion

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chiatrist at the County Jail. Acting in that capacity, Ziporyn conducted interviews with mass-killer Richard Speck commencing in July, 1966. While the case was still pending in the state court Ziporyn contacted a publishing firm and agreed to disclose the confidential information elicted from Speck in the form of a book entitled "BORN TO RAISE HELL," Grove Press, 1967, $5.95. He was, of course, summarily fired.

on the fact that courts have not generally recognized the trustworthiness and reliability of "truth serum" tests as being sufficiently well established to accord the results the status of competent evidence, stating that "the expected effect of the drug is to dispel inhibitions so that the subject will talk freely, but it seems scientific tests reveal that people thus prompted to speak freely do not always tell the truth." 237 F. 2d at 896. As made clear in *Knight* v. *State*, 97 So. 2d 115 (Fla. 1957), there is no scientifically recognized drug that inevitably causes its subject to speak the truth. The so-called truth serums, including hyoscine, hydrobromide, sodium amytal, evipan sodium, nembutal, scopalomine, and sodium pentothal, are drugs that alter the consciousness so that the subject's ability to associate thoughts and inhibit his form of expression is impaired; none of these drugs assure truth. See also: *Commonwealth* v. *Butler*, 213 Pa. Super. 388, 247 A. 2d 794 (1968); Dession, Freedman, Donnelly, and Redlich, "*Drug-Induced Revelation and Criminal Investigation*," 62 Yale L. J. 315, 319 (1953).

Second, the trial court properly limited Ziporyn to statements of objective fact because he was not a treating physician, having examined Hester only that he might take the stand as an "expert" witness for the defense. The principle is well established that a doctor called for the purpose of examining with an eye toward testifying and not for treating cannot testify to subjective symptoms. With a treating physician a patient will not prevaricate because successful treatment depends on the truth. Such is not the case with a doctor who examines only to testify. It is common knowledge—and a matter of no small concern in the medical profession—that parties to litigation have attempted to use medical experts as trump cards. It

is, in part, for this reason that a non-treating physician is limited to objective testimony only.

Of course, Ziporyn was not a treating physician. The defense attorneys stated as much when they requested permission to have him see Hester (R. 103). Rather, he was a physician retained for the Petitioner after indictment ostensibly to take a blood sample, but whose true purpose was to administer a drug of doubtful efficacy in an effort to create defense evidence.

In *Padgett* v. *Southern Ry. Co.*, 396 F. 2d 303 (6th Cir. 1968), the Court of Appeals held that statements made to a physician to qualify him to testify as an expert witness are inadmissible. This rule of evidence is based on the familiar hearsay doctrine and is designed to exclude self-serving declarations disguised as expert testimony. The same rule has been applied in a long line of Illinois cases[31].

Lastly, defense counsel argued at trial that the testimony of Ziporyn would prove Hester to be a very dependant individual, afraid of older and larger males, abnormally afraid of physical injury, and extremely gullible.[32] The Court properly limited Ziporyn's testimony because defense counsel persistently sought to elicit it by improper questions. It is obvious from the offer of proof that Zip-

31. See *Santiemo* v. *Days Transfer Co.*, 9 Ill. App. 2d 487, 133 N.E. 2d 539 (1956); *Brennan* v. *Leshun*, 51 Ill. App. 2d 132, 201 N.E. 2d 167 (1964); *Conway* v. *Tambrini*, 68 Ill. App. 2d 190, 215 N.E. 2d 303 (1966); *Louisiana & Arkansas Ry. Co.* v. *Johnson*, 214 F. 2d 290 (5th Cir. 1954); *Nashville, Chattanooga and St. Louis Ry. Co.* v. *York*, 127 F. 2d 606 (6th Cir. 1942); *Hardy-Burlington Mining Co.* v. *Baker*, 10 F. 2d 277 (6th Cir. 1926); *Walker* v. *West Coast Fast Freight, Inc.*, 233 F. 2d 939 (9th Cir. 1956).

32. Significantly, none of this testimony was offered on the motion to suppress Hester's confession.

oryn would have to base his opinion on facts of which he could have no personal knowledge, i.e., family relationships, family teachings, and alleged specific threats or pressures on Hester when he made his statements (R. 2324-5). The only way to properly include facts outside the personal knowledge of the expert is by asking him a hypothetical question including those facts. Such a question must be based on facts established or supported by evidence presented prior to the asking of the question. *Harten* v. *Laflen*, 212 U.S. 397; 29 S. Ct. 351 (1908); *Grand Island Grain Co.* v. *Roush Mobile Home Sales, Inc.*, 391 F. 2d 35 (8th Cir. 1968); *Soloman Dehydrating Co.* v. *Guyton*, 294 F. 2d 439 (8th Cir. 1961). Illinois cases in point apply the same rule. See, for example, *People* v. *Muniz*, 31 Ill. 2d 130, 198 N.E. 2d 855 (1964).

In this case no facts about Hester's family background, particularly any relations with his father or older brothers, were ever brought out. And no allegations of coercive pressure were made until after Ziporyn left the stand. Finally, no attempt was ever made to ask a hypothetical question.

The instant case falls squarely within the rationale of the cases cited. The trial court realized that Ziporyn examined Hester only for the purpose of giving subjective testimony and that his diagnosis might be affected by Hester's self-serving statements. Therefore, Ziporyn was properly limited to a statement of objective facts. His opinion was based, in part, upon information given to him by Hester (R. 2314). Such a personal history clearly constitutes the most subjective type of analysis. The questions

proffered here by the defense were not limited to observable objective symptoms, but were claimed to be based on a whole examination of the petitioner, and that such an "examination consisted of a mental status examination and a complete psychiatric history" (R. 2314). This history was hearsay and inadmissible. *People* v. *Brown*, 31 Ill. 2d 415, 201 N.E. 2d 409 (1964). Clearly then, the trial judge was correct in refusing to allow Ziporyn to testify to the matters cited in the offer of proof.

V.

THE SCOPE OF DISCOVERY ACCORDED DEFENSE COUNSEL ENCOMPASSED ALL MATERIALS WHICH WERE RELEVANT TO THE PETITIONER'S CASE AND WAS SUBSTANTIALLY BROADER THAN THAT REQUIRED BY LAW.

(Answer to Petitioner's III(b))

The record reveals that counsel were provided with the prior statements of all witnesses called by the state as well as a complete list of witnesses. In addition they had interviewed countless adult witnesses on their own prior to arraignment (R. 3), and had thereafter interviewed many school children (R. 47). Copies of the autopsy protocol as well as the results of all tests conducted by the Chicago Crime Laboratory were provided and counsel were permitted to take experts to the laboratory on two occasions (R. 65) where they were allowed to independently examine the physical evidence and run their own tests, using the laboratory's facilities (R. 2517-18). On one occasion their expert spent four hours with Captain Dragel, head of the section, at the laboratory. (R. 67). Defense counsel appeared at the laboratory twice (R. 167). It further ap-

pears that at the time counsel made their motion to have Doctors Wiener and Campbell (R. 234) admitted to the Crime Laboratory, one Dr. Davis and his associates had made three prior examinations on behalf of petitioner (R. 231). Significantly, the results of Dr. Davis' tests were never offered in evidence by the defense nor was he called to testify.

A copy of Hester's written confession was given to counsel as were the complete records of the Chicago Board of Education regarding Hester and his victim, Mrs. Keane. In this connection it should be noted that counsel abused their subpoena power on several occasions. They demanded records that did not exist (R. 223, 225-26), resubpoenaed the same records of Hester and Mrs. Keane because, in counsel's opinion, the files were "quite thin" (R. 252), and, on one occasion, caused subpoenas to issue at 3:30 in the afternoon for records which were to be due in court the following morning (R. 184-187). On another occasion, counsel waited until the Board attorney left the courtroom before demanding further Board records (R. 189, 213).

It should also be noted that counsel made no demand for police reports or notes at the appropriate time, that is, when the State witnesses were called to testify. They now allege that error of constitutional dimension infected Hester's trial because of limitations on discovery.

The State of Illinois, displaying a progressive attitude in matters of discovery, has, by case law, adopted the rule of the Jencks Act, 18 U.S.C. 3500, and has provided that in criminal cases the defense is entitled to "statements or reports which could properly be called in the witnesses own words." *People* v. *Wolff*, 19 Ill. 2d 318, 323, 167 N.E. 2d 197, 201 (1960). Illinois has taken this position on its own initiative even though in *United States* v.

Augenblick, 393 U.S. 348 (1969), this Court held that "our *Jencks* decision and the Jencks Act were not cast in constitutional terms . . . . They state rules of evidence governing trials before federal tribunals; and we have never extended their principles to state criminal trials." 393 U.S. at 356. Following the *Wolff* decision, a criminal defendant in Illinois enjoys a greater latitude of discovery than defendants in many other states. Petitioner Hester was accorded the full privileges of *Wolff* and more.

The Crime Laboratory personnel ran certain tests, and as they did so they made notes and jottings as to time and temperature. This was done for their own benefit so that when the tests were run a second or third time, for purposes of verification, the results could be checked against the first results. This is standard practice in any scientific laboratory. The notes might consist only of a few numbers scribbled on a piece of paper which would be totally meaningless to anyone but the writer. Petitioner contends that the failure to produce these notes was error.

In fact, the provision of laboratory notes, in the only instance in which they were requested, would have been quite irrelevant to the Petitioner's case. Dr. Wiener testified for the defense that, in his opinion, technician Principe had run his typing tests all wrong and that his conclusions were of no value. Therefore, technician Principe's notes, which might have indicated exact rather than approximate clumping times, would be thoroughly useless to counsel because the whole thrust of their argument was that the test and clumping times were meaningless in any event.

The State complied precisely with the rules of criminal discovery which prevail both in Illinois and the Fed-

eral Courts. In fact, they went beyond that in an effort to help the defense fairly compile information, giving defense counsel and their various experts virtual free-run of the Crime Laboratory. Furthermore the record fails to demonstrate how the defense might have been prejudiced by the failure to produce certain scientific jottings which the prosecution never had in its possession in any case (R. 3-4). There is absolutely no intimation that these notations were contradictory to the testimony of the laboratory technicians concerning their findings; and such numerical notations cannot correctly be characterized under the Jencks Rule, adopted in *Wolff*, as a "written statement" which has been defined as "a recorded recital of past occurrences made by prospective prosecution witness." *United States* v. *Sopher*, 362 F. 2d 523, 525 (7th Cir. 1966). The notes made by Crime Laboratory technicians were not statements or reports in any sense of the word. They were not turned over to any higher police authority for purposes of review as a departmental report. Nor were they communications to the prosecution. They were at most merely the personal notes and jottings of a scientist.

The rule is widely accepted that notes accumulated and used in preparation of official reports need not be preserved and turned over to defense counsel. The argument advanced by Petitioner here was made in *People* v. *Dickerson*, 270 Cal. App. 382, 75 Cal. Rptr. 828 (1969), and rejected:

> "To support such a contention and defense must mean that in connection with any investigation of an alleged crime everybody carrying on such an investigation must preserve rough notes made for the purpose of ensuring accuracy of their official reports and deliver them upon request to defense counsel in order to give possible grounds for cross-examination of such

witnesses; no such rule has ever been propounded; it seems to us that it seeks to carry to a ridiculous extreme the enunciation of 'rights of accused criminals'." 75 Cal. Rptr. at 833.

See also: *People* v. *Gorka*, 381 Mich. 515, 164 N.W. 2d 30 (1969); *State* v. *Jacobs*, 450 P. 2d 542 (Ore. 1969).

This Court has recently rejected the contention that the prosecution's failure to produce the "rough pencil notes" of its investigator violated a petitioner's constitutional rights. *United States* v. *Augenblick*, 393 U.S. 348 (1969).

In the instant case the defense had the results of the Crime Laboratory tests and the Laboratory reports. The tests were repeated by their own experts, the results of which were never produced at trial to rebut the State's evidence. Counsel cross-examined the State's scientific witnesses at great length, going through the tests step-by-step. Therefore counsel knew everything about the tests. In fact, they conceded their knowledge of the tests early in the litigation; the depth of the defense's claimed need for a perusal of any possible notations is reflected in their comment that all they wanted "to see was to see it in writing" (R. 73).

The Petitioner's random insertions of cases such as *Miller* v. *Pate*, 386 U.S. 1 (1967); *Giles* v. *Maryland*, 386 U.S. 66 (1967); *Brady* v. *Maryland*, 373 U.S. 83 (1962); *Barbee* v. *Warden*, 331 F. 2d 842 (4th Cir. 1964) are little more than undisguised attempts to cast an ominous overtone to a trial which in no way can be characterized as possessing analogous discovery situations. What is strikingly unfair about this tactic is that counsel for Petitioner in this Court constituted two-thirds of the defense team at trial and is intimately familiar with the latitude allowed regarding discovery below. No comment from the Re-

spondent could carry the weight of the words of defense counsel below when it was stated in connection with the facilities and personnel of the Chicago Crime Laboratory: ". . . everyone was completely cooperative" (R. 67).

The record clearly reveals no error whatever where discovery matters are concerned.

VI.

THE SEIZURE OF PETITIONER'S CLOTHING DID NOT VIOLATE THE FOURTH AMENDMENT BECAUSE IT WAS INCIDENT TO A LAWFUL CUSTODY WHICH FOLLOWED AN ARREST ON PROBABLE CAUSE.

(Answer to Petitioner's Point IV)

Following the arrest of Petitioner, he was brought to the Andy Home where his clothing was taken by the police so that it could be subjected to analysis at the Chicago Police Department Crime Laboratory. Petitioner claims that the seizure of his clothing was unlawful and that evidence derived from the laboratory analysis should therefore have been suppressed. (Br. 88-102).

Petitioner's argument is supported by the following reasoning: the arrest of Hester was unlawful since it was not based upon probable cause; or, even assuming the validity of arrest, since Hester's clothing was not taken until after he arrived at the Andy Home the seizure "was too remote in time and place to have been made incidental to the arrest" (Br. 98).

Our analysis of the issues presented, and their proper determination, runs along somewhat different lines. We

believe that the police had probable cause for the arrest of Hester; the arrest and subsequent custody were therefore valid, and since the clothing was seized incident to a valid custody, and not incident to arrest, questions of "remoteness" do not arise. We turn, then, to a consideration of these problems.

The first question to be decided is whether Hester's arrest, which occurred at approximately 8:45 A.M. on April 21, 1961, following the initial conversations between Petitioner and Officers Teller and Pruneke, was valid. Specifically, was Petitioner's arrest supported by probable cause?

The standard by which probable cause is determined has been stated many times by this Court, and we take as our starting point this Court's oft' repeated words from *Brinegar* v. *United States*, 338 U.S. 160 (1949):

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."***
>
> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise

> that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." 338 U.S. at 175-76.

But such a standard, taken with others from which this Court has woven and rewoven the fabric of the rule of probable cause, are *only* starting points. Like a determination of "voluntariness," a determination of "probable cause" can be made only by drawing together all that is shown concerning the relationship of a particular person to a particular crime, and then judging whether it holds the balance between suspicion on the one hand, and certainty of guilt on the other. What, then, did officers Teller and Prunkle know about Lee Arthur Hester and the murder of Mrs. Keane before his arrest on the morning of April 21, 1961?

The two detectives arrived at the Lewis-Champlain schools early in the morning on the day after Mrs. Keane's murder. After searching the premises they began to interview teachers. One teacher, Miss Virginia Fritsch, informed them that sometime between 8:00 and 11:55 a.m. on the morning of the murder she observed a student alone and running in the hall. This was unusual because students didn't ordinarily move about the building unaccompanied during school hours. The student was Lee Arthur Hester (R. 1082-1085). Miss Fritsch told the detectives that Hester was supposed to have been involved in some disciplinary matter; but because she had no personal knowledge in that regard she sent them to the Assistant Principal's office for further information (R. 1086). There they encountered Miss Rita Considine who informed them that "*Mrs. Keane told the other two clerks and myself going home*

in the car, that a parent had come up to complain about Lee Arthur wanting her boy to commit an unnatural act" (R. 1080). This incident was being treated as a disciplinary matter by school authorities and *Mrs. Keane* was handling it (R. 1086).

After hearing all this the detectives decided to speak with Hester. They proceeded to his classroom and, upon meeting him, noticed almost immediately that there were bloodstains on his clothing.[33] The officers asked him how he got the stains and Hester gave them the following assorted and evasive answers: that he got them in a fight with another boy; that he had a nosebleed; that he cut himself with an axe while chopping wood; that he was sawing wood and cut himself with a saw (R. 1126).

In the face of these facts, Petitioner's astounding and reckless assertions of malfeasance and incompetence on the part of Teller and Pruneke defy all understanding. He says:

> "The facts surrounding Hester's arrest show that Teller and Pruneke shockingly failed to engage in even a cursory investigation and literally arrested the first student with whom they came into contact" (Br. 89).
>
> "In substance, Hester was arrested because of a couple of scratches and small stains on his clothing, a condition prominent on most of the students at Lewis-Champlain school.[34] The arrest standards employed

33. In the Supreme Court of Illinois, Petitioner argued that the stains were so small the officers couldn't have seen them. This was completely absurd inasmuch as Hester himself testified that the officers asked him where the bloodstains came from (R. 455).

34. Of course, no record support for this assertion is cited and none exists.

by Teller and Pruneckle required that almost every student be arrested in the fashion of Hester" (Br. 92).

"Hester's name was mentioned . . . an inquisitorial flame was lit and the officers literally 'grabbed' the first 'guy' whose name was mentioned in an uncomplimentary manner" (Br. 92).

We do not understand how such arguments can be made. We certainly know that they cannot be supported. Before the arrest of Petitioner, the officers knew that (1) Hester had been seen alone in the hall on the morning of the murder, an unusual event according to school personnel; (2) Hester was then involved in a disciplinary matter concerning sexual misconduct; (3) this disciplinary matter was being handled by the murder victim, Mrs. Keane; (4) the day following the murder Hester had bloodstains on his clothing; (5) Hester's answers concerning the bloodstains and their origin were patently evasive.

Were these "facts leading sensibly to [the officers'] conclusions of probability," in the words of *Brinegar*? We believe that they were. Possessed of this knowledge, officers Teller and Pruneckle would have been derelict in their duty had they not arrested Petitioner for the murder of Mrs. Keane. Of course, this proof was not proof of guilt. But proof of guilt was not required. Most certainly, such evidence aroused much more than suspicion. From such evidence, officers Teller and Pruneckle could, and did, conclude that it was *probable* that Petitioner was involved in the death of Mrs. Keane.[35]

35. The answer to Petitioner's claim that probable cause was lacking in this case because of alleged "contradictions" in the testimony of the arresting officers (Br. 94-97) is found in the recent words of the United States

Petitioner argues, however, that the information obtained by the arresting officers should not have been *credited* by them because it rests upon "gossip" (Br. 91), and hearsay which was "unreliable and groundless on its face" (Br. 92). Support for this argument is then sought from decisions which deal with the issue of whether information received from unknown or "confidential" informants, principally in narcotics cases, was shown to have been "reliable."

The difficulty with this argument is that Petitioner has employed the wrong test, and, accordingly, he has reached the wrong result. The information supplied to the officers in this case—which goes much of the way to establishing probable cause—did not come from nameless, faceless accusers whose identities, motives and opportunities for knowledge are cloaked in the garb of the "confidential reliable informant." Rather, the officers here had the word of Hester's teachers and school administrators. Their identities were known; their motives were unquestionable and their opportunities to know were patent. In such a case, the usual rules requiring the verification of information supplied by persons who have not previ-

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Court of Appeals for the District of Columbia in *Pandergrast* v. *United States*, —— F. 2d ——, 4 Cr. L. Rep. 2378 (Jan. 31, 1969), where the court said:

> "The indicia of guilt need not be absolute, or even fully consistent; they may leave some room for doubt, and even for error. But they suffice, we repeat, when they 'warrant a man of reasonable caution in the belief' of guilt. *Carroll* v. *United States*, 267 U.S. 132, 162."

ously given information to the police do not apply.[36] For the purpose of finding probable cause in this case, reliability is demonstrated by the identity, occupations and the very words of the persons who gave the information to the arresting officers.[37]

Since the arrest of Petitioner was based upon probable cause, it follows that the subsequent custody was lawful. Pursuant to this custody, *and as an incident of it*, the police took Petitioner's clothing for the purpose of subjecting it to laboratory analysis. The cases sustaining as reasonable, and therefore, constitutional, this action on the part of law enforcement officials are both universal and unanimous.[38]

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36. "Experienced stool pigeons are not the only source of credible information, and the tests of reliability which must be applied to such persons are not necessarily applicable to every citizen who assists the police." *People* v. *Lewis*, 240 Cal. App. 2d 546, 549, 49 Cal. Reptr. 579, 582 (1966). See also *People* v. *Williams*, 368 Mich. 494, 118 N.W. 2d 391 (1962); *People* v. *Wolfe*, 147 N.W. 2d 447 (Mich. App. 1967); *People* v. *Johnson*, 76 Cal. Reptr. 768 (Cal. App. 1969); *Reed* v. *United States*, 402 F. 2d 756, 758-61 (8th Cir. 1968).

37. *Cf. Spinelli* v. *United States*, —— U.S. ——, 89 S. Ct. 584, 592-94 (1969) (concurring opinion of Mr. Justice White).

38. *United States* v. *Caruso*, 358 F. 2d 184 (2d Cir. 1966); *Gollihar* v. *United States*, 362 F. 2d 549 (8th Cir. 1966); *Robinson* v. *United States*, 283 F. 2d 508 (D.C. Cir. 1965); *United States* v. *Guido*, 251 F. 2d 1 (7th Cir. 1958); *State* v. *Mark*, 46 N.J. 262, 246 A. 2d 377 (1966); *People* v. *Shaw*, 327 Cal. App. 2d 606, 47 Cal. Rptr. 96, *cert. den.* 384 U.S. 964 (1965); *State* v. *Dill*, 277 Minn. 40, 151 N.W. 2d

Here there was no "search" in the ordinary sense of that term. Petitioner's clothes were displayed to the arresting officers, indeed, to the world, at the time of his arrest and custody. Though there was a "seizure" of the garments, it was undertaken upon probable cause to believe that scientific examination would yield vital and relevant evidence in the investigation of the death of Mrs. Keane.[39]

If the arrest which produced the custody was undertaken on probable cause; if the custody which produced the clothing was therefore valid; if the seizure of the clothing rested, as well, upon probable cause to believe that probative evidence of criminal guilt would thereby be found, then the actions of the police did not violate the Fourth Amendment and the motion to suppress was properly overruled.

413 (1967); *Carter* v. *Commonwealth*, 209 Va. 317, 163 S.E. 2d 589 (1968); *State* v. *Menard*, 331 S.W. 2d 521 (Mo. 1960); *State* v. *Phillips*, 262 Wis. 303, 55 N.W. 2d 384 (1952); *Sheppard* v. *State*, 394 S.W. 2d 624 (Ark. 1965); *State* v. *Post*, 255 Iowa 573, 123 N.W. 2d 11 (1963).

39. *Schmerber* v. *California*, 384 U.S. 757 (1966).

CONCLUSION

The People of the State of Illinois respectfully request that the judgment of the Supreme Court of Illinois be affirmed.

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